Opening Statement of the Honorable Ed Whitfield
Subcommittee on Energy and Power
Hearing on "EPA's CO2 Regulations for New and Existing Plants"
October 7, 2015

(As Prepared for Delivery)

This subcommittee has been examining EPA's carbon dioxide regulations for new and existing power plants since they were first proposed. Last August, EPA announced the final versions, and unfortunately none of the fundamental concerns we've raised appear to have been addressed. This EPA has become the political arm of the White House issuing regulations by fiat. It is time to stop and review what these rules mean for the nation's electricity system and the economy overall. I welcome Acting Assistant Administrator Janet McCabe to this subcommittee.

The new and existing source provisions are the most significant part of the President's Climate Action Plan, and they closely resemble the 2009 Waxman-Markey cap and trade bill in that they comprehensively control the electric sector well beyond the fence line of regulated power plants, and they threaten extraordinary costs yet will do almost nothing to reduce the earth's temperature. I believe that the regulatory version of cap and trade is every bit as inflexible and unworkable as the legislative version that I voted against.

Our Ratepayer Protection Act addressed two major concerns with the existing source rule – its legality and its impact on ratepayers. First, the bill would have extended the compliance deadlines so that the rule's provisions would not take effect until after judicial review is complete. On this point, I am disappointed that EPA has not learned the lesson from its Mercury MACT rule, which the Supreme Court recently found to be legally flawed. This decision came too late to avoid serious economic damage, including the irreversible decision to close several coal-fired power plants in response to this rule. As with the Mercury MACT rule, the existing source rule's aggressive deadlines would necessitate potentially costly compliance measures before we know whether the rule will survive judicial scrutiny. And I might add that there are many reasons to question the legality of this unprecedented measure.

The Ratepayer Protection Act also gave state governors the authority to waive the existing source rule's provisions if they are determined to have a significant adverse effect either on ratepayers or on reliability. According to an analysis of the proposed rule by NERA, fully 43 states will experience double digit increases in electricity prices – and this is on top of rates that are already increasing due in part to other EPA regulations. Higher electric bills disproportionately hurt low income households and those on fixed incomes.

On reliability, NERC and others with expertise on reliability have warned of the potential adverse impact of the existing source provisions. The final rule may be even more problematic than the proposed version, especially now that EPA has chosen to discourage new natural gas facilities as well as coal in favor of less-reliable renewables like wind and solar.

Few if any of the concerns about the proposed existing source rule were addressed in the final version, and the reasons for the Ratepayer Protection Act are still applicable. And I might add that the new source rule also remains very problematic, as it will serve as a de facto ban on new coal generation. Today, with natural gas as cheap as it is, a ban on new coal may not seem so damaging, but circumstances may change, and I believe the nation will suffer future adverse consequences from not having new coal generation as an option.

In addition to the new and existing source final rules, I also have serious concerns with EPA's proposed "Federal Plan," which would impose a federal emissions trading program on any state that does not get its own plan approved. Again, I welcome Acting Administrator McCabe and look forward to learning more about all three rules.

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